TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]53

THE UNITED STATES, APPELLANT,

vs.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN).

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 26, 1915.

(26728)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 642.

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NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (HOLLAND-AMERICA LIJN).

APPEAL FROM THE COURT OF CLAIMS.

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1 I. PETITION AND SCHEDULE "A." FILED MAY 13, 1914.

United States Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn), Claimant,
against
UNITED STATES OF AMERICA.
No. 32831.

To the Honorable Judges of the Court of Claims:

Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn), claimant against the United States of America, by Lucius H. Beers, its attorney, for its petition, respectfully shows to the court and alleges:

First. At all the times hereinafter mentioned, petitioner was and still is a steamship company, organized under the laws of and a citizen and subject of the Kingdom of Netherlands, with its principal place of business at Rotterdam, Holland, and a place for the transaction of business at 8 Bridge Street, city of New York, United States of America. At all such times petitioner's business was the transportation of passengers and freight between Rotterdam and New York.

Second. Between January 1, 1908, and December 4th, 1913, petitioner thus transported many aliens into the United States. The United States immigration officials temporarily detained some of said aliens in various hospitals because they were alleged to be suffering from temporary illnesses or diseases or accompanied aliens who were so suffering; and subsequently decided that such aliens had legally been brought to the United States and consequently permitted them to enter the United States. Said aliens were so detained and
2 subsequently admitted, under an act of Congress entitled "An act to regulate immigration of aliens into the United States," approved February 20, 1907, hereinafter referred to as the immigration act. The Secretary of Commerce and Labor and the Commissioner General of Immigration and their subordinates, claiming to act under the alleged authority of the immigration act and pursuant to various decisions, opinions, letters, circulars, rules and regulations issued by them from time to time, rendered to the petitioner from month to month during the aforesaid period, bills for the hospital treatment and maintenance of the aliens so detained and subsequently admitted as aforesaid. A portion of rule 13 in regulations of the Commissioner General of Immigation, dated June 7, 1909, summarizes and epitomizes the theory and pretended authority upon which such bills were rendered, and is as follows:

"Bills for hospital treatment and maintenance shall be rendered monthly by hospitals against the steamship companies responsible,

through the office of the Commissioner of Immigration or inspector in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bills. If any steamship company refuses to pay such bills rendered with the approval of the immigration officials, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally adjudicated."

Said officials threatened that, if said bills were not paid, thereafter all aliens brought by the vessels of the petitioner would be held on board ship until their application for admission to the United States should be finally adjudicated. On all petitioner's vessels arriving in the port of New York during the aforesaid period, there were
3 aliens who were temporarily detained and subsequently admitted as aforesaid. Their detention on board ship would have delayed the sailing of petitioner's vessels for periods varying from a few days to several weeks. If said threats (which were actually carried out in at least one instance in the port of New York, as an example and warning to the steamship companies) had been carried out, the result would have been, not merely great inconvenience and financial loss to the petitioner and other steamship companies similarly situated, but a complete disruption of oceanic commerce in the port of New York and the United States. Consequently, the petitioner paid, under duress and involuntarily, the bills, when rendered. Such payments were made monthly by checks to the order of the person who for the time being was Commissioner of Immigration.

Third. The exaction of such payments from the petitioner and the making of such threats were entirely without warrant of law. The immigration act provides that where a suitable building is used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens and the transportation companies shall be relieved of the responsibility for their detention thereafter. During all the times aforesaid, there was in the port of New York a suitable building used for the detention and examination of aliens. The immigration act required the petitioner to pay to the collector of the port $4.00 for each alien entering the United States upon a vessel of the petitioner, and provided that said moneys should constitute a permanent appropriation to be called the "Immigrant fund" to be used to defray the expense of regulating the immigration of aliens into the United States. The aliens whose hospital and maintenance expense bills were rendered to and paid by the petitioner as aforesaid, were detained and examined and subsequently admitted to the United States pursuant to the requirements of

immigration act, and the acts of the immigration officials with reference thereto constituted the regulation of the immigration of
4 aliens into the United States, and all expenses incurred therein and thereby were required by law to be paid out of the aforesaid "Immigrant fund." By an act of Congress, known as the appropriation bill of March 4, 1909, provision was made by which the aforesaid tax of $4.00 for each alien should be paid into the Treasury of the United States to the credit of miscellaneous receipts, to the end that Congress and not the Secretary of the Treasury, as theretofore, should control the "Immigrant fund," but in said act of March 4, 1909, a special appropriation was made for all expenses of the enforcement of the laws regulating the immigration of aliens into the United States, and similar appropriations have ever since been made in the succeeding annual appropriation acts, so that there has always been an available fund in the United States Treasury for the payment of the expenses of regulating the immigration of aliens into the United States, included among which expenses are the hospital bills above referred to.

Fourth. For more than twenty years steamship companies transporting aliens to the United States, including the petitioner, have claimed that they were not liable for such hospital charges. In March, 1909, the then Secretary of Commerce and Labor, in a case which by mutual arrangement was made a test case, decided that such hospital charges must be paid by the United States and not by the steamship companies. Thereupon the steamship companies refused to pay any further such hospital charges until in the latter part of 1909 the successor of said Secretary of Commerce and Labor restored the former rule and required the steamship companies to resume the payment of such hospital charges under penalty of having such aliens detained on board ship until regularly admitted to the United States. Such rule has every since been in force.

Fifth. On December 5, 1910, the United States brought an action in the United States District Court for the Southern District of New York, against this petitioner to recover the hospital
5 charges of aliens brought to the port of New York by this petitioner and temporarily detained and subsequently admitted in the manner aforesaid, during the period between March, 1909, and October, 1909, while there was in force the rule exempting such steamship companies from paying such charges. Said court gave judgment for this petitioner and held that the immigration act requires such charges to be paid by the United States and not by the steamship company. From this judgment the United States appealed to the Circuit Court of Appeals, which court affirmed the decision of the District Court.

Sixth. Petitioner is advised by counsel that under the laws and statutes of the United States as interpreted in said case of the

United States of America against Holland American Line, the exaction from the petitioner of the above mentioned hospital charges under duress was in violation of the rights and privileges secured to the petitioner as a subject of the Kingdom of the Netherlands under the Constitution of the United States, the treaties between the United States and the Kingdom of the Netherlands and the laws of the United States.

Seventh. The amounts thus unlawfully exacted from the petitioner and paid by it under duress for the detention and treatment of said aliens, legally brought but temporarily detained in hospitals and later admitted to the United States, were remitted monthly to the Commissioner of Immigration at the port of New York as required by him. The amount of each monthly remittance is set forth in the schedule hereto annexed and made a part of this petition and marked "Schedule A." The total amount so paid by the petitioner within six years prior hereto, as shown by said schedule, is $19,523.15. All of said sums were paid for charges for the treatment and temporary detention of said aliens legally brought and later allowed to enter the United States, and each alien for whose detention any part of said sum was paid was legally brought and subsequently allowed to enter the United States and none of said aliens was deported. All of said amounts were paid over to and are now in the possession of the United States and have not been returned to the petitioner though due demand therefor has been made.

Eighth. The Kingdom of the Netherlands by its laws and statutes accords to citizens of the United States the right to institute and prosecute suits and claims against the Government of the Kingdom of the Netherlands in the Kingdom of the Netherlands for moneys due and in such proceedings judgment may be recovered against the Kingdom of the Netherlands.

Ninth. Petitioner has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States; no assignment or transfer of the claim herein made or any part thereof, has been made at any time to any person or party; petitioner is justly entitled to the amounts herein claimed from the United States after allowing all just credits and offsets and no other person, persons or corporation other than petitioner is the owner of the claim herein set forth or in any way interested therein; and no part of the moneys so paid by the petitioner as claimed herein has ever been repaid to the petitioner or for the account or advantage by the United States; and by reason of the facts aforesaid the sum of $19,523.15 is now due and owing to the petitioner from the United States.

Wherefore petitioner demands judgment against the United States of America for the sum of $19,523.15 and all proper relief in the premises.

By Wm Van Doorn.

Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn),
Claimant.

Lucius H. Beers,
Attorney for Claimant, 49 Wall Street, New York, U. S. A.

7 State of New York,
County of New York, ss:

W. Van Doorn being duly sworn, deposes and says: I am the agent and attorney-in-fact of Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn), the petitioner and claimant in this case. I am personally familiar with the details of this claim and all the facts connected therewith. I believe that all the facts stated in the foregoing petition are true.

The reason why this verification is made by me is that the petitioner is a foreign corporation and none of its officers are within the State of New York or the District of Columbia, or any other portion of the United States. I have been duly authorized by power of attorney, executed by the petitioner, to verify this petition and prosecute this case. Said power of attorney is annexed hereto and filed herewith.

W. Van Doorn.

Subscribed and sworn to before me this 11th day of May, 1914.

[seal.] E. H. Pollaci,
Customs Notary, Kings County, N. Y.

Certificate filed in New York County.

8 Schedule A.

Date of payment.	Amount paid.
1908.	
May 27	$440.75
June 29	222.25
July 17	363.00
Aug. 19	336.75
Sep. 29	1,031.40
Oct. 19	404.00
Dec. 4	225.00
31	403.75
1909.	
Jan. 25	392.00
Mar. 1	479.50
Apr. 14	332.75
29	562.25
June 7	464.25

Date of payment.	Amount pai
1909	$613.
July 30	295.
Aug. 28	1,259.
Sep. 30	
1910.	342.
Jan. 15	31.
Feb. 25	24.
" "	152.
Mar. 4	120.
18	111.
Feb. 15	123.
Mar. 10	106.
Apr. 22	89.
May 30	22.
July 23	232.
" "	246.
" "	179.
Nov. 30	219.
Dec. 22	93.
Nov. 30	107.
" "	
9 1911	90.
Jan. 16	83.
" "	62.
Feb. 18	57.
Mar. 9	109.
Apr. 21	67.
May 26	120.
Aug. 16	155.
" "	137.
Sept. 22	78
" "	396
Nov. 22	481
Dec. 22	319
" "	
1912	265
Jan. 30	272
Feb. 16	193
Apr. 5	175
25	223
June 13	384
July 13	371
Aug. 27	378
" "	242
Oct. 31	144
23	37.
Nov. 20	79
Dec. 24	
1913	62
Jan. 23	46
Feb. 21	13
Mar. 24	29
Apr. 24	31
May 28	56
June 26	32
Aug. 6	

Date of payment.	Amount paid.
1913	
Oct. 15	$291.25
21	182.75
Nov. 19	230.75
Dec. 9	88.75
	19,523.15

10 II. GENERAL TRAVERSE.

Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn). vs. THE UNITED STATES. } No. 32831.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. ARGUMENT AND SUBMISSION OF CASE.

On May 16, 1918, this case was argued and submitted on merits by Messrs. Howard Mansfield and Franklin Grady, for the claimant, and by Mr. Horace S. Whitman, for the defendants.

11 IV. FINDINGS OF FACT, CONCLUSION OF LAW, AND OPINION OF THE COURT BY HAY, J. ENTERED JUNE 3, 1918.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of fact:

I.

The plaintiff at all times hereafter mentioned was, and still is, a foreign corporation and steamship company, duly organized and existing under and by virtue of the laws of, and a citizen subject of, the Kingdom of the Netherlands. Since the date of its incorporation it has continuously been, and now is, engaged in the business of transporting passengers and freight for hire between Rotterdam and the port of New York. Its principal place for the transaction of business is in Rotterdam, Holland. It also has a place for the transaction of business at No. 8 Bridge Street, New York City.

II.

Between January 1, 1908, and December 4, 1913, plaintiff transported many aliens into the United States. On arriving at the port of New York some of said aliens were found to be suffering from diseases of such a character that if they should recover therefrom they would be admissible pursuant to law, if not liable to expulsion for some other cause. Typical diseases of that character were measles, chicken pox, and scarlet fever. There were also noncontagious diseases. In various instances such aliens, because they were young children or for other reasons, required the care and attention of friends or relatives with whom they had arrived, or were accompanied by young children or other persons requiring such care.

III.

Upon their arrival at the port of New York, the commissioner of immigration at Ellis Island immigration station, New York Harbor, detailed immigration inspectors and also medical officers of the United States Public Health and Marine Hospital Service to board the vessels on which they had arrived.

12 Upon the arrival of a vessel the ship's surgeon presented to Government medical officers reports of diseases, injuries, births, and deaths among the passengers during the voyage. The medical officers thereupon examined on board the vessels the aliens (both cabin and steerage passengers) mentioned in such reports as having diseases, and also any other aliens observed by them as apparently diseased or ill. All aliens who, after such examination, were found by said medical officers to be suffering from contagious diseases, were, under order of said medical officers, temporarily removed by the claimant from the vessels to public hospitals, in or near New York City, under contract arrangements made by the proper United States authorities, whereby the hospitals charged the United States at certain agreed rates for the treatment, care, and maintenance of said aliens.

Cabin passengers were thereupon inspected and examined on board the vessels by the immigration inspectors and medical officers, and, if found by them to be free from contagious disease and to be clearly and beyond doubt entitled to land, they were permitted to land at the docks and enter the United States. The masters of the vessels removed temporarily to Ellis Island for further examination all alien cabin passengers who did not appear to be clearly beyond a doubt entitled to land. The alien steerage passengers who were not suffering from contagious diseases were all temporarily removed by Government order from the docks to Ellis Island, and were there inspected and examined by the immigration inspectors and medical officers.

After arrival at Ellis Island of the first and second cabin passengers who were temporarily removed there because they were suffering from contagious diseases or because they did not appear to be clearly and beyond a doubt entitled to land, as above stated, and after arrival at Ellis Island of the steerage passengers, except those temporarily removed to public hospitals, as above stated, they were all examined by immigration inspectors and United States medical officers. Said medical officers certified for the information of the immigration officers and boards of special inquiry all physical and mental defects and diseases observed by them. All aliens who were found to be clearly and beyond a doubt entitled to land were permitted to land and enter the United States on such primary examination. All aliens who were not found on such examination to be clearly and beyond a doubt entitled to land, including all aliens who were certified by the medical officers as having some physical or mental defect, or disease, were detained at the Immigration Hospital on Ellis Island for treatment and for further examination by a board of special inquiry.

When the aliens temporarily detained for any reason or removed to hospitals were accompanied by relatives who were dependent as stated in Finding II (supra), the accompanying aliens were required by the medical officers on humanitarian grounds to be placed temporarily in hospitals until those whom they accompanied were admitted or rejected, and were maintained and cared for in the same manner as the diseased aliens.

13 IV.

As the aliens temporarily detained in hospitals recovered from their diseases, they and the temporarily detained undiseased aliens accompanying them were discharged from hospitals and passed upon by the proper Government officials and admitted or excluded, as the case might be. Bills for their treatment, care and maintenance while so temporarily detained in hospitals were periodically presented to the claimant by the commissioner of immigration. In the case of the aliens detained in hospitals not connected with the United States Government the bills were for the exact amounts charged by such hospitals. In the case of the aliens detained in the United States Immigration Hospital, the bills presented were for the actual cost of their treatment, care, and maintenance. The services performed by the respective hospitals were necessary and worth the amounts charged. The bills as rendered included charges for transportation and charges for the care and maintenance of aliens who died during detention or were subsequently deported upon proper governmental order, but the plaintiff sues only for hospital charges paid on account of alien immigrants temporarily detained and subse-

quently admitted to the United States. Between May 27, 1908, and December 9, 1913, such bills aggregating nearly $17,000 in amount were presented to and paid by the plaintiff. The payments so made by the plaintiff to the United States Commissioner of Immigration on account of aliens subsequently admitted to the United States pursuant to the immigration laws, and covering hospital services alone not including transportation or any item other than treatment, care, and maintenance in hospitals, amounted to $16,993.50. In other words the plaintiff paid to the commissioner of immigration after May 14, 1908, and before May 13, 1914, bills amounting to $16,993.50 rendered by or with the approval of the proper officials of the United States for the treatment, care, and maintenance in hospitals (hospitals' charges exclusively) prior to October 22, 1913, of alien immigrants arriving on plaintiff's vessels and temporarily removed to and detained in hospitals by order of the properly constituted officials of the United States and ultimately admitted to the United States pursuant to the immigration act, and not deported from the United States. Said amount was so paid to and is still held by the United States, though demand therefor has been duly made.

V.

In removing the diseased aliens and those accompanying them, whose hospital charges are included in the above-mentioned sum of $16,993.50, to hospitals and detaining them there, the immigration and medical officials acted upon their honest judgment, and said aliens were examined and they and the accompanying aliens were permitted to enter the United States at the earliest moment after their reaching a sufficient state of health for the proper officer to decide that they were not subject to exclusion from the United States or any of the grounds mentioned in the immigration act.

14 VI.

From 1906 to 1913, both inclusive, the United States maintained at Ellis Island in the port of New York, suitable buildings which were then used for the detention and examination of alien immigrants. If, instead of being taken charge of in said buildings, the aliens arriving on plaintiff's vessels during said period had been examined on board ship or detained there pending their recovery to health without being removed from said vessels serious inconvenience and financial loss to the plaintiff and the public would have resulted.

VII.

Ellis Island was first used by the United States as an immigrant station in the year 1891. The hospital at Ellis Island was first used

in the year 1892. During the period covered by this case there was no contagious ward in said hospital. The practice of sending immigration inspectors and medical officers to board incoming passenger steamships at Quarantine and to inspect and examine the first and second cabin passengers aboard the vessels, the practice of inspecting and examining the steerage passengers at Ellis Island, the practice of removing temporarily to public hospitals all aliens suffering from contagious diseases and the practice of placing temporarily in the Immigration Hospital all aliens certified by medical officers as having some physical or mental defect or disease, which practices are outlined in the foregoing paragraphs, have been in effect at the port of New York since the year 1891.

VIII.

Since the opening of the immigration station at Ellis Island the question of liability of the steamship lines for hospital charges, such as are involved in this case, has been the subject of dispute between the properly constituted officers of the United States and certain steamship companies, including the plaintiff herein. On July 13, 1894, a number of steamship lines, including the plaintiff, wrote a letter to the commissioner of immigration at Ellis Island, New York, giving him notice that such companies would pay bills for the maintenance at Ellis Island of steerage passengers landed by such companies and afterwards deported. The commissioner sent a copy of this letter to the Superintendent of Immigration at Washington and asked instructions. The superintendent replied on July 20, 1894, directing the commissioner to have inspection of alien immigrants made on board vessels bringing them, or on the dock, except in case of companies which agreed to pay bills for maintenance on Ellis Island, whereupon the commissioner notified plaintiff that on and after July 23, 1894, he would cause all alien immigrants arriving on its vessels to be inspected on board the vessels or on the dock, instead of bringing them to Ellis Island for that purpose, as theretofore.

On July 23, 1894, the steamship *Edam*, belonging to plaintiff, arrived at the port of New York, and under instructions of the commissioner of immigration at New York, all alien immigrants on said ship were inspected on board the vessel.

15 On July 24, 1894, the plaintiff wrote the commissioner of immigration asking an explanation why such steerage passengers were not received and discharged from Ellis Island. To this the commissioner replied on July 24, 1894, to the effect that the letter of the various steamship lines offering to pay charges for maintenance of aliens afterwards deported had been construed as a refusal on the part of the plaintiff and other lines to pay bills for maintenance of immigrants who were detained for examination but

not finally deported. The commissioner notified plaintiff that on receipt of a satisfactory letter from it agreeing to pay maintenance charges for detained immigrants afterwards admitted to the United States, it would be permitted to send its steerage passengers to Ellis Island for examination pending the settlement of the matter of an agreement or bond which the Bureau of Immigration had proposed to require from the steamship companies.

In response to the foregoing notice, the plaintiff sent to the commissioner the following letter:

"NEW YORK, *July 25, 1894.*

"Dr. J. H. SENNER,
"*U. S. Commissioner of Immigration,*
"*Ellis Island, N. Y. Harbor.*

"DEAR SIR: In reply to your yesterday's favor I now beg to inform you that the Netherlands-American Steam Navigation Company will, until the matter is decided differently by proper authority, continue to pay the cost of maintenance pending examination at Ellis Island of all immigrants brought by their steamships to the port of New York, and that we are ready to give bond to that effect.

"Please inform me, if this meets with your requirements, so as to secure the examination of immigrants arriving by our steamers at Ellis Island, as heretofore."

To the above letter the commissioner replied as follows:

"OFFICE OF THE U. S. COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York Harbor, July 26, 1894.*

"NETHERLANDS-AMERICAN STEAM NAVIGATION COMPANY,
"*39 Broadway, New York.*

"GENTLEMEN: Replying to your letter of the 25th inst., in further reference to the payment of maintenance bills of immigrants detained at this station for examination, I beg to say that the statement made by you therein is satisfactory and that passengers arriving by vessels of your line will be examined at Ellis Island instead of upon shipboard.

"Respectfully, yours,
"(Signed) Dr. J. H. SENNER,
"*Commissioner.*"

In 1893 the Superintendent of Immigration, with the approval of the Secretary of the Treasury, adopted rules governing hospital charges incurred by aliens temporarily detained and later permitted to enter the United States. Such instructions so far as pertinent were as follows:

"RULE 1. All alien immigrants before they are landed shall be inspected and examined, as by law provided, on shipboard or at
16 a suitable place provided for the convenience of the owners of vessels transporting them and the comfort of the immigrant

where they may be temporarily placed whilst undergoing such examination. During such time, and until finally discharged and landed, said immigrants shall be deemed and treated as on shipboard, and the owners, consignee, or master of the vessel transporting them shall be liable for all expenses incurred in lodging, feeding, and caring for them, or immigrants may be remanded on board ship, or taken on board ship, by the master thereof, who shall be responsible for their safe-keeping.

"RULE 2. Upon arrival all alien immigrants shall be inspected and examined without unnecessary delay. Those qualified to land shall be promptly discharged. Those detained for special inquiry shall have a speedy hearing and be either discharged or ordered deported. If an appeal is prayed, the record of proceedings shall at once be transmitted to the Superintendent of Immigration at Washington. All expenses incurred in lodging, feeding, and maintaining alien immigrants, during the period covered by these proceedings, shall be borne by the steamship company, owner, or master of the vessel transporting them. No appeal shall be received or transmitted which is applied for after the immigrant has been transferred from the immigrant station to be deported.

"RULE 3. Upon the arrival of an alien immigrant, helpless from sickness, physical disability, or infancy, who is detained for further inquiry, one person only (if necessary) shall be detained to look after and care for such helpless immigrant, the natural guardian or a relative to be selected. The transportation company to be responsible for their maintenance, whilst so detained. The remainder of the family (if any) shall proceed on their journey or defray their own expenses.

"RULE 4. In case of an immigrant not qualified to land, but who would be entitled, upon proof of certain facts, such as the case of a woman who claims to have a husband, father, or brother, residents in this country, able and willing to support her, she may be detained a reasonable time until such husband, father, or brother can be communicated with. The transportation company to be responsible for her maintenance in such and like cases until a final decision is reached.

"RULE 5. Immigrants qualified to land shall be promptly discharged and landed, and if they desire to wait for friends or remittances they may be permitted to do so upon the payment of all costs and expenses, which should not be charged to the transportation company. In cases where an immigrant qualified to land is unable, from accident or unavoidable circumstances, to immediately continue his journey and is without sufficient means to defray the expenses of the enforced delay, the commissioner of immigration may, in his discretion, pay said expense, reporting said case to the Bureau of

Immigration with reasons for his action, and ask that such expense be paid out of the 'immigrant fund.'

"RULE 6. That in case of the arrival of sick and disabled immigrants unable to travel, said immigrants shall be removed to hospitals provided for their care, and shall be maintained at the expense of the owner or master of the vessel transporting them until sufficiently recovered either to be landed or deported, and while
17 detained in hospital shall not be considered as landed until examined and discharged, or said immigrant shall remain on shipboard until able and ready to be landed or deported.

"RULE 9. Immigrants who are detained under rules 4 and 5 (awaiting proofs, etc., or who are sick and in hospitals) should pay for their own maintenance, and the transportation company shall be held only as security for the payment of subsistence and hospital expenses. Access to such immigrants shall be permitted to an agent of said transportation company to request payment thereof, and should said immigrants refuse or be unable to pay the same, it shall be a circumstance to be considered, upon arriving at a decision in his case, as to whether he may or may not be likely to become a public charge.

"RULE 10. No charge for food, lodging, or maintenance, or for hospital attendance, medicines, or other expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-sustaining without profit."

On October 24, 1894, the Secretary of the Treasury wrote the Attorney General asking his determination of the following questions:

1. Is the cost of housing, feeding, and caring for immigrants, who are detained pending final inquiry, but who are subsequently allowed to land, a proper charge against the steamship companies, or is it a proper charge against the immigration fund?

2. Are the expenses for the hospital treatment of immigrants, pending final inquiry, chargeable to the steamship owners or to the immigrant fund?

3. Are the steamship owners to be charged with the expenses of guarding the immigrants, when ordered back, until the vessel sails?

4. Are the steamship owners bound to transport these immigrants from that island to the mainland when, after inspection, the immigrants are allowed to land?

On July 24, 1897, and August 16, 1898, the Commissioner General of Immigration issued new rules relating to the maintenance and deportation of alien immigrants, but no change was made in the rules of 1893 in respect to aliens ultimately admitted.

On December 19, 1898, the attorney for the North German Lloyd Steamship Co. wrote the Secretary of the Treasury calling his attention to the rules relating to the maintenance of aliens while undergoing inspection and protested against such rules as being op-

pressive, unjust, and not in accordance to law. This letter having been placed in the hands of the Department of Justice, the solicitor wrote the Secretary of the Treasury, December 24, 1898, giving his opinion to the effect that rules 1 and 2 were in harmony with the law. March 13, 1903, the commissioner general revised the regulations regarding maintenance of aliens. The portions of the new regulations governing aliens temporarily detained and subsequently admitted are as follows:

"RULE 8. Every alien arriving at a port of the United States shall be promptly examined, as by law provided, either on shipboard or at some other place designated for that purpose. If found admissible, he shall be at once landed, but if upon special inquiry he is denied admission, he shall be informed that he has a right of appeal therefrom, and the fact that he has been so informed shall be entered of record in the minutes of the boards's proceedings, but no ap-
18 peal will be considered after any such alien has, in consequence of an adverse decision of a board of special inquiry, been transferred from an immigrant station to be deported.

"RULE 9. Every alien detained for special inquiry, which shall be conducted separate and apart from the public, shall have a speedy hearing and, upon the conclusion thereof, be either at once landed or ordered deported. If he elects to appeal from said order of deportation, he must, to enable officers to comply with the provisions of section 19 of the act of March 3, 1903, file notice of such appeal promptly, and a like right of appeal may be exercised by any member of a board of special inquiry who dissents from the decision rendered by such board.

"RULE 10. Every such notice of appeal shall act as a stay upon the disposal of the alien whose rights are thereby affected until a final decision is rendered by the department; and, within 36 hours after the filing of such notice, the record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith should be forwarded to the Commissioner General of Immigration by the chief immigration officer at the port of arrival, accompanied by his views thereon in writing; but on such appeal of any case to the department no evidence will be considered which has not already been passed upon in said case by a board of special inquiry. If additional time is granted to the friends or counsel of an appealing alien to prevent a miscarriage of justice, the said chief officer may require the deposit of a sum of money sufficient to defray the cost of maintaining appellant during the additional time thus allowed.

"RULE 13. The expenses incurred for the keeping and maintenance of every alien temporarily removed from a vessel, as provided by law, shall be borne by the owners of the vessel upon which he came until he is lawfully landed or delivered on board such vessel for deportation.

"RULE 17. Every alien who left the port of embarkation in good physical condition, and who would be qualified to land but for some sickness or disability other than a loathsome or a dangerous contagious disease, which was contracted or which developed during the voyage, may either remain on shipboard or be removed for hospital treatment at the expense of the owners of the vessel on which he came, and while detained in hospital he shall not be considered as landed, provided that if the sickness or disability with which such alien is afflicted is so slight, in the judgment of the examining medical officer, as not to require treatment in hospital, and said alien is able to pay for the necessary medical care he needs, he shall be landed. Requests by such owners for reimbursement for hospital expenses may be made only in respect of aliens detained under the provisions this rule, and then only in a proper manner.

"RULE 19. Any alien who has been finally determined to be admissible may be permitted to wait for friends or remittances upon payment by him of expenses incurred by reason of such delay. In case such an alien is unable, from accident or other unavoidable circumstances, to immediately continue his journey and is without sufficient means to refray the expense of his enforced delay, the Commissioner of Immigration may, in his discretion, pay said expense, reporting said case to the Bureau of Immigration with rea-
19 sons for his action, and request that such expense be repaid out of the immigrant fund.

"RULE 20. Not over one accompanying alien (preferably the natural guardian or a relative) shall be detained at the expense of the transportation company for the purpose of caring for an alien who, for any reason, is detained for further inquiry, if the latter requires such care. (See sec. 11, act approved Mar. 3, 1903.)

"RULE 26. No charge for food, lodging, or maintenance or for hospital attendance, medicines, or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-sustaining without profit.

"RULE 27. Every officer of the United States Public Health and Marine-Hospital Service detailed under section 17 of the act approved March 3, 1903, for duty to any point in the United States shall, during the continuance of such detail, be under the direction (subject to the Public Health and Marine-Hospital Service regulations governing the medical inspection of aliens, as approved by the Secretary of the Treasury Nov. 18, 1902), of the immigration officer in charge of said port."

These rules continued in force until July 1, 1907, when a new body of regulations were adopted. They provide as follows:

"RULE 5. EXAMINATION OF ALIENS.— * * * Every alien arriving at a port of the United States shall be promptly examined, as by law provided, either on shipboard or at some other place desig-

nated for that purpose. Every alien who may appear to the examining immigrant inspector to be clearly and beyond a doubt entitled to land shall be at once admitted; every alien who may not appear to be clearly and beyond a doubt entitled to land shall be detained for examination by a board of special inquiry, which examination shall be promptly conducted separate and apart from the public, and, upon the conclusion thereof, the alien shall be either immediately landed or ordered excluded and returned to the country whence he came. If an appeal lies, the alien shall be informed of his right thereto, and the fact that he has been so informed shall be entered of record in the minutes of the board's proceedings. If the alien elects to appeal, he must, to enable officers to comply with the provisions of section 19, file notice of such appeal not less than 48 hours prior to the sailing of the first vessel by which his return may be effected, unless such sailing occurs less than 48 hours after the order of deportation is made. But in no event shall an appeal be considered after an alien has, in consequence of an adverse decision of a board of special inquiry, been transferred from an immigrant station to be excluded, unless such transfer has been made to prevent congestion or danger of contagion, as provided by rule 8 hereof.

"RULE 6. APPEALS.—An appeal may be taken from any decision of a board of special inquiry which determines whether an alien shall be admitted or excluded, by the alien himself or by a dissenting member of the board; but no appeal may be taken from a decision of a board of special inquiry, based upon the certificate of the examining medical officer, whereby an alien is rejected as being affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such alien within any of the following excluded classes: Idiots, imbeciles, feeble-minded persons, epileptic, insane persons, persons who have been insane within five years previous, persons who have had two or more attacks of insanity at any time previously, persons certified as having a mental or physical defect which may affect the ability of the person to earn a living; but as to aliens coming within the last-mentioned class, namely, persons laboring under physical disability, they may nevertheless be admitted, in the discretion of the secretary, as provided in rule 20 hereof.

"RULE 7. APPEALS, PROCEDURE.—Notice of appeal shall act as a stay of all proceedings until a final decision is rendered by the Secretary; and, within 48 hours after the filing of such notice, the complete record of the case shall be forwarded to the Commissioner General of Immigration by the immigration officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal of any case to the Secretary no evidence will be considered which has not already been passed upon in said case by a board of

special inquiry at the original hearing, or upon a rehearing if so ordered. (See sec. 25.) If, to prevent a miscarriage of justice, additional time is granted to the friends or counsel of an appealing alien, the said immigration officer may require the deposit of a sum of money sufficient to defray the cost of maintaining appellant during the additional time thus allowed.

"RULE 9. MEDICAL EXAMINATIONS.—Officers of the United States Public Health and Marine-Hospital Service (or, if such officers are not available, civil surgeons of not less than four years' professional experience) are required by section 17 of the immigration act to make a physical and mental examination of all arriving aliens, and to certify for the information of immigration officers any and all physical and mental defects or diseases observed by them. Every officer of such service detailed for this duty shall, subject to the instructions of the Surgeon General of the Public Health and Marine-Hospital Service, be under the direction of the immigration officer in charge of the port to which he may be detailed.

"The certificate of the medical officer shall state the physical or mental defect or disease observed, specifying the name by which it is known in common speech as well as the name by which it is known in medicine; and the certificate shall also state:

"(a) Where an alien is certified as having been insane within five years previous, or as having had two or more attacks of insanity at any time previously, how the previous existence of the malady has been ascertained (sec. 2);

"(b) Where an alien is certified as being afflicted with a loathsome or dangerous contagious disease, that the disease named is in fact a loathsome or dangerous contagious disease, and is or is not of a quarantinable nature (secs. 2, 19);

"(c) Where an alien is certified as having a mental or physical defect of a nature which may affect his ability to earn a living, or as being likely to become a public charge by reason of any mental or physical disability, the bearing of such mental or physical shortcoming upon the customary occupation of the alien and upon his general capacity for useful employment, whether such defect is of a temporary or permanent nature, and whether the deficiency of the alien has been corrected by artificial or educational means (secs. 2,
21 "(d) Where an alien is certified for permission to land for medical treatment in any hospital of the United States, or where it is certified that the health or safety of an insane alien would be unduly imperiled by immediate deportation, that the alien is not suffering from tuberculosis or from a loathsome or dangerous contagious disease of a nonquarantinable nature, and the probable duration of the alien's detention in hospital, asylum, or elsewhere (sec. 19);

"(e) Where an alien is certified as being helpless from sickness, mental or physical disability, or infancy, whether such alien requires the protection or guardianship of an attendant (secs. 11, 21);

"(f) Where the life or minor children of a domiciled alien are certified as being affected with any contagious disorder whether such disorder is a loathsome or a dangerous one, the probable length of time needed to determine whether the disorder will be easily curable, and whether they can be permitted to land without danger to other persons (sec. 37); and

"(g) Where an alien is certified as being an idiot, imbecile, epileptic, or afflicted with tuberculosis or with a loathsome or dangerous contagious disease, whether the alien was so afflicted at the time of foreign embarkation, whether the existence of the disease or disability might have been detected by means of a competent medical examination at such time, how the previous condition of the alien has been ascertained, and the ground for believing that it might have been detected by a competent examination.

"RULE 10. LANDING FOR HOSPITAL TREATMENT.—Where an alien has been excluded by decision of a board of special inquiry, and where the order for the return of the alien has been suspended, or where the alien is held, pending the determination of his case, by order of court, to await transportation, on account of his health, because his testimony is required in the prosecution of offenders against the act, or for some other cause, an application may be made, accompanied by the certificate of the medical examiner, to the Secretary of Commerce and Labor for permission to allow the landing of the alien for hospital treatment or other appropriate care or attention. This application will be granted as of course where it is certified by the medical examiner that the health or safety of an insane alien would be unduly imperiled by immediate deportation, or whether it is manifest to the commissioner of immigration, or the immigration officer in charge, that the condition of the alien requires immediate hospital treatment. In such cases, pending the decision of the Secretary, hospital treatment or other appropriate care or attention shall be immediately afforded. In all other cases the application will not be granted unless it clearly appears from the report of the commissioner of immigration, or the immigration officer in charge, or from other evidence accompanying the application that such a course is necessary to meet the ends of justice and humanity. The landing or detention of an alien for the purpose contemplated by this rule shall not be construed in any manner to alter the status of the alien with reference to his right to enter or remain in the United States (sec. 19).

"RULE 11. DETENTION OF SICK WIVES OR CHILDREN.—Where, upon the arrival of the wife or minor child or children sent for by a domiciled alien, any of the former are found to be afflicted with a contagious disorder and it can not be immediately determined

whether the disorder will be easily curable, they shall be held
22 until a determination can be had, and an application may be made accompanied by the certificate of the medical examiner, to the Secretary of Commerce and Labor for permission to allow the landing of such wife or child for hospital treatment or other appropriate care or attention. In such cases, where necessary, pending the decision of the Secretary, hospital treatment or other appropriate care or attention shall be immediately afforded. This application, or the accompanying papers, must clearly show that the husband or father has actually taken up his permanent residence in this country and has actually filed his declaration of intention to become a citizen of the United States, and that he is in fact the husband or father of the alien in question. Nothing contained herein shall be taken as in any manner affecting the liability of transportation companies under section 9 of the immigration act, or as altering the status of the aliens concerned with reference to their admission or exclusion. (See rules 10 and 12.)

"RULE 12. DETENTION OF ATTENDANTS FOR HELPLESS ALIENS.—Where it is found that an alien is helpless from sickness, mental or physical disability, or infancy, and that, if excluded, he will require the protection and guardianship of an attendant upon his return to the country from whence he came, if the alien arrives accompanied by others, not more than one of such accompanying aliens (preferably a natural guardian or relative) shall be detained to act if, in the judgment of the commissioner of immigration or the immigration officer in charge, such detention is necessary. Such detention shall not be deemed necessary, but is permissible, in quarantinable cases. If the alien arrives unaccompanied, a suitable person shall be employed for the purpose. The expense incident to such detention or employment and to the transportation involved shall be borne by the transportation company. (Secs. 11, 19, 21.)

"RULE 13. DISABLED ALIENS, PROCEDURE.—A disabled alien within the purview of rules 10, 11, and 12 hereof may be afforded the required medical treatment on board ship or in the detention quarters or may be removed to a suitable hospital for treatment, as in his discretion the commissioner of immigration or inspector in charge at the port may decide is required by existing circumstances and the condition of the alien's health as reported upon by the surgeon charged with the medical examination of aliens at such port. If such an alien is removed to a hospital, he shall not be regarded as in any sense landed, and the cost of his maintenance and care there must be paid by the transportation company by which he is brought to the port to the same extent as though he were held on board ship or in a detention station.

"If in the judgment of the commissioner or inspector in charge, based upon the expressed opinion of the medical examiner, it is neces-

sary as a measure of humanity or for the proper care of the alien so removed to hospital to also place in the hospital a suitable attendant or some person who is dependent upon the disabled alien, or the reverse, the cost of the detention in hospital of such additional person must also be borne by the interested transportation company. Bills for hospital treatment and maintenance in such cases shall be rendered monthly by the hospital against the steamship companies responsible, through the office of the commissioner or inspector
23 in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement, in accordance with the provisions of section 19 of the immigration act. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bills, and will take no part in any arrangements affecting the matter which such a company may have made or may make with the alien or his friends. If any steamship company refuses to pay bills for hospital treatment rendered against it, with the approval of the immigration officials, as prescribed in this rule, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally granted or denied.

"RULE 15. ASSISTANCE TO ADMITTED ALIENS.—Any alien who has been admitted may be permitted to wait for friends or remittances upon payment by him of the actual expenses incurred by reason of such delay. In case such an alien is unable, from accident or other unavoidable circumstances, to immediately continue his journey, and is without sufficient means to defray the expense of his enforced delay, the commissioner of immigration may, in his discretion, pay such expense, reporting said case to the Bureau of Immigration and Naturalization with reasons for his action, and request that such expense be repaid out of the immigration fund.

"RULE 16. CHARGES FOR CARE AND MAINTENANCE.—At ports where the Immigration Service maintains hospitals no charge for food, lodging, or maintenance, or for hospital attendants, medicines or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-supporting without profit.

"RULE 20. ADMISSION UNDER BOND.—Where an alien is liable to be excluded because likely to become a public charge or because of physical disability, and it is found that the alien is not afflicted with tuberculosis or with a loathsome or dangerous, contagious disease, and that he is otherwise admissible, and, after notice of his right to do so, the alien signifies his intention of applying for admission under bond, the board of special inquiry shall not pass upon the alien's right to enter as in other cases, but shall make a special finding of fact in the premises and report the same, including the certificate of

the medical examiner, to the immigration officer in charge, who shall forward the report, together with his recommendation, to the Secretary of Commerce and Labor, through the Commissioner General of Immigration. If, in the exercise of the discretion conferred by law, the Secretary decides to admit the alien, a bond will be required in an amount which in no case shall be less than $500, and the sureties thereto shall be parties of known and ascertained responsibility and approved by the commissioner of immigration or immigration officer in charge. The bond shall be executed in duplicate on forms supplied by the bureau, but shall not be accepted until authorized by the department."

On October 5, 1908, the rules of July 1, 1907, were superseded by new rules. Rule 5 of the new rules provided that every alien on arriving at a port of the United States should be examined, as by law provided, either on shipboard or at some place designated for that purpose.

24 Rule 13 is as follows:

"DETENTION AND TREATMENT OF ALIENS, PROCEDURE AND EXPENSE OF.—(a) A disabled alien, within the purview of rules 10, 11, and 12 hereof, may be afforded the required medical treatment on board ship or in the detention quarters, or may be removed to a suitable hospital for treatment, as in his discretion the commissioner of immigration or inspector in charge at the port may decide is required by existing circumstances and the condition of the alien's health as reported upon by the surgeon charged with the medical examination of aliens at such port. If such an alien is removed to a hospital, he shall not be regarded as in any case landed, and the cost of his maintenance and care there must be borne in one of the several ways hereinafter specified, as the circumstances of the case may require.

"(b) If in the judgment of the commissioner or inspector in charge, based upon the expressed opinion of the medical examiner, it is necessary as a measure of humanity or for the proper care of an alien removed to hospital to also place in the hospital a suitable attendant or some person who is dependent upon the disabled alien, or the reverse, the cost of the detention in hospital of such additional person must be borne in the same manner as the cost of treating the disabled alien.

"(c) The expenses involved in detaining or treating aliens shall be borne as follows: (1) By the immigrant fund: In case of (aa) those held as witnesses under section 19 and rule 14; (bb) insane aliens whose health or safety would be unduly imperiled by immediate deportation (sec. 19); (cc) wives and minor children of aliens who have declared intention or minor children of naturalized citizens born abroad prior to naturalization of parent (sec. 37 and rule 11; Op. Compt., Jan. 15, 1908). (2) By the alien: Those treated by

'express permission' of the Secretary, under section 19, although afflicted with tuberculosis or a loathsome or dangerous contagious disease, in accordance with the provisions of rule 10 (Op. Compt., Jan. 15, 1908). (3) By the alien, preferably, but by immigrant fund under special authority: Aliens whom it is necessary for any reason to hold at a port of entry, after admission, in accordance with rule 15. (4) By steamship companies: Aliens not falling within any of the foregoing classes whom it is necessary for any reason to hold or to treat in hospital pending determination of right to land, or awaiting deportation under order of rejection of a board of special inquiry or of the department (sec. 19).

"(d) Covering cases of the character mentioned in class (4) of the preceding paragraph, bills for hospital treatment and maintenance shall be rendered monthly by hospitals against the steamship companies responsible, through the office of the commissioner of immigration or inspector in charge, the latter's approval to be attached to the bills, if found correct, before forwarding them to the companies for settlement. Officers of the Immigration Service will in all such cases look to the steamship companies for settlement of the hospital bill. If any steamship company refuses to pay such bills rendered with the approval of the immigration officials, it will, of course, be necessary to require thereafter that all aliens brought by the vessels of such company shall be held on board ship until their applications for admission have been finally adjudicated.

25 "RULE 16. CHARGES FOR CARE AND MAINTENANCE.—At ports where the Immigration Service maintains hospitals, no charge for food, lodging, or maintenance or for hospital attendance, medicines, or other hospital expenses shall be made in excess of the actual cost of furnishing the same, the intention being to make the service self-supporting without profit.

"RULE 20. ADMISSION UNDER BOND.—If, in following the provisions of rule 6 hereof relating to appeals, the board of special inquiry reaches the conclusion that an alien in whose case a medical certificate for some physical defect, other than tuberculosis or a loathsome or dangerous contagious disease, has been rendered is excludable solely because such certified physical defect is, in the board's opinon, 'of a nature which may affect the ability of such alien to earn a living,' or render him liable to become a public charge, but that such alien is otherwise admissible, and, after notice of his right to do so, the alien signifies an intention to apply for admission under bond, the board shall not enter an excluding decision against the alien as in other cases, but shall make a special finding of fact in the premises and report the same, including the certificate of the medical examiner, to the immigration officer in charge, who shall forward the report, together with his recommendation, to the Secretary of Commerce and

Labor, through the Commissioner General of Immigration. (See secs. 10 and 29 and rule 6.)

"If in the exercise of the discretion conferred by law, the Secretary decides to admit the alien, a bond will be required in an amount which in no case shall be less than $500.

"The sureties thereto shall be parties of known and ascertained responsibility and approved by the commissioner of immigration or immigration officer in charge. The bond shall be executed in duplicate on forms supplied by the bureau, but shall not be accepted until landing of the alien under bond is authorized by the department.

"If, within a reasonable time, not to exceed thirty days, after the receipt of the department's authority for the landing of an alien under bond, there is not forthcoming bond with acceptable sureties, that fact, and all others that may have a bearing upon the matter, shall be reported to the department, with request for instructions; and if in any such case the former decision of the department is reversed the alien shall then be formally rejected by the board.

* * * * * * *

"F. P. SARGENT,
"*Commissioner General of Immigration.*

"Approved October 5, 1908.

"OSCAR S. STRAUS,
"*Secretary.*"

On October 19, 1907, an alien immigrant, named Andras Toth, arrived in New York with his wife and three children on the Cunard steamship *Slavonia*. He had erysipelas and was sent to a hospital, where he remained until November 12. From there he was removed to the Immigration Hospital on Ellis Island, where he remained until November 19. In the meantime, his wife and three children were detained at Ellis Island, where, on November 11, she and one child were sent to the Immigration Hospital, from which they were discharged on November 13. On the latter day the child who had
26 accompanied the mother to the Immigration Hospital was transferred to a New York hospital to be treated for measles. This child was detained in said hospital until December 27. On December 28 the entire family was permitted to enter the United States. The commissioner of immigration at Ellis Island insisted that the hospital maintenance bills of the entire family, from the time of their arrival on October 19 to the time of their discharge on December 28, should be paid by the Cunard Steamship Co. The Cunard Steamship Co. declined to pay, and the matter remained in abeyance until the summer of 1908, when the commissioner of immigration at Ellis Island definitely ruled that the Cunard Steamship Co. must make payment of all the bills.

From this ruling of the commissioner, the Cunard Co. appealed to the Secretary of Commerce and Labor, then the Hon. Oscar S. Strauss. About March 3, 1909, Secretary Strauss, on an opinion rendered by the solicitor for the department, the Hon. Charles Earle, adopted the view of the Cunard Steamship Co. and wrote the following letter to the counsel of the Cunard Steamship Co.:

"OFFICE OF THE SOLICITOR,
"DEPARTMENT OF COMMERCE AND LABOR,
"*Washington, D. C., March 3, 1909.*

"3778
"LUCIUS H. BEERS, Esq.,
"*49 Wall St., New York City.*

"DEAR MR. BEERS: I have to acknowledge the receipt of your letter of February 24, 1909, and in excuse for my failure to make an earlier reply I beg to say that, although I submitted to the Secretary a second memorandum relating to the subject in question on February 16, 1909, the Secretary being engrossed with other matters, had not disposed of it when your letter was received and when I again brought the matter to his attention. I have only to-day learned that the Secretary has adopted the views expressed by me in the premises, which were favorable to your contention. My notion of the matter you will gather from the following extract from my memorandum of February 16:

"Having in mind that, apart from deportation cases, there is only one provision of law which makes the steamship companies responsible for the maintenance of aliens, while on land, namely, that clause of section 19, which reads, 'the cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came,' that this provision applies only to 'aliens brought to this country in violation of law,' and that the same section further provides that such aliens 'shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them,' I was unable to see how the transportation companies could legally be called upon to pay the expense of maintaining aliens in hospital until a cure is effected in cases where the aliens have not been brought to the United States in violation of law. I did not mean to imply that a sick alien should not be detained long enough to enable the examining medical officer and the board of special inquiry to determine definitely the nature of the alien's affliction and the question as to his admissibility, or that the steam-
27 ship company is not responsible for the expenses incident to detention for that purpose; I merely wished to say that I could find no authority for holding in hospital, for an indefinite period

and until a cure is effected, at the expense of the transportation company, an alien who belongs to none of the excluded classes. It seemed to me, moreover, that some mode of procedure should be adopted, whereby it would be possible to distinguish those cases in which it is necessary to detain the alien for a certain length of time in order to pass upon the question of his admissibility, from those cases in which it is merely necessary, on humanitarian grounds, to furnish the alien with medical treatment for some temporary affliction. In my previous memorandum I suggested that 'the proper procedure to be followed in such cases would seem to be to formally enter of record the decision whereby the alien is declared admissible to the United States, notwithstanding the fact that it may be necessary for the time being to detain the alien for hospital treatment. The expenses of such hospital treatment, moreover, would appear to be a proper charge upon the immigrant fund.' It may well be that some other mode of procedure would be better adapted to accomplish the same purpose, and would be open to fewer objections. For example, it may be desirable to continue the present practice of deferring the decision as to the alien's admissibility upon his discharge from hospital, but in that event, in my judgment, a means should be devised of making the decision admitting the alien effective from a date when all the essential facts necessary to a determination of the question were first ascertained. If this were done, all expenses incurred prior to the date mentioned would be properly chargeable to the transportation company, and all expenses subsequent to that date might be charged to the immigrant fund.

"Very truly, yours,

"CHARLES EARL, *Solicitor.*"

In or about the month of July, 1909, the plaintiff discontinued the payment of bills for hospital charges for aliens not deported, and on September 16, 1909, certain steamship companies, including the claimant, wrote a letter to the commissioner of immigration at Ellis Island, as follows:

"NEW YORK, *September 16, 1909.*

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

"DEAR SIR: We, the undersigned, beg to invite your attention to the decision of the Secretary of Commerce and Labor in the case of the appeal of the alien Andreas Toth and family, since that determination necessarily affects the question of our responsibility for bills, the payment of which has heretofore been demanded by the Bureau of Immigration.

"In the Toth case, an appeal to the Secretary was taken by a steamship company for the purpose of determining the question whether the company is liable, under the immigration act of 1907, for the ex-

pense of maintenance and hospital treatment of an alien, who, on landing, is found to be afflicted with an apparently temporary sickness, requiring treatment, but not warranting his deportation. The contention of the company which pressed that appeal was, that such aliens have not been brought in violation of law and that negli-
28 gence can not be attributed to the steamship company in such case, and, therefore, that Congress, by the immigration act, has not imposed such expense on the steamship companies, but has created the immigrant fund to provide for them.

"We are informed that the appeal in the Toth case resulted in the adoption by the Secretary of views favorable to the contention of the company, and from this it follows that the expense of maintenance and treatment in such cases are not legally charges against steamship companies. Under these circumstances, we feel obliged to notify you that we can not be responsible for such expenses, except for a period long enough to enable the examining medical officer to determine definitely the nature of the alien's affliction.

"We respectfully urge that the result of the decision of the Toth appeal need not affect those cases where, on humanitarian grounds, it is desirable to furnish an alien, who is not deportable, with medical treatment for some temporary affliction. The immigrant fund, which has been collected by the transportation companies and has been paid by the immigrants themselves for the express purpose of meeting such expenses, is more than sufficient for the purpose, and by the immigration act Congress has declared it to be a permanent appropriation to be used under the direction of the Secretary to defray the expense of regulating the immigration of aliens.

"We also beg to notify you that we are prepared to adjust bills, heretofore rendered, on the basis of the decision in the Toth case."

The commissioner of immigration on Ellis Island referred the matter to the Secretary of Commerce and Labor, who, on October 9, 1909, obtained from the Comptroller of the Treasury a ruling to the effect that such expenses were not a proper charge against the appropriation for the expenses regulating immigration.

The latter part of October, 1909, the commissioner requested the counsel for claimant of the steamship lines to attend a conference at Washington, at the office of the Secretary of Commerce and Labor. This conference was held October 26, 1909, and Lucius H. Beers, counsel for the claimant, was informed at such conference by the Acting Secretary that unless the companies, including the claimant, would agree to pay the bills for hospital treatment, care and maintenance, the aliens found to be suffering from "nondeportable" diseases would be detained on board ship. Counsel then said he would advise the company to pay such charges of aliens arriving after October 26, 1909, until the matter could be further considered and

the companies could agree on some line of action; thereupon he so advised such steamship lines.

"DEPARTMENT OF COMMERCE AND LABOR,
"IMMIGRATION SERVICE, OFFICE OF THE COMMISSIONER,
"*Ellis Island, New York, N. Y., November 1, 1909.*

"LUCIUS H. BEERS, Esq.,
"*49 Wall St., New York City.*

"SIR: I have written to Washington for information as to how the Government may receive advance deposits from steamship companies in reference to hospital bills which accrue. Serious complications are likely to arise if this be done in the wrong way, and some time may elapse before the matter is settled. It will require
29 still further time, if the practice be adopted, for the steamship companies and this office to agree upon the amounts to be deposited and the terms on which deposits are made. In the meantime hospital bills are daily accruing in reference to immigrants detained for infectious diseases, such as measles, scarlet fever, and diphtheria. If the steamship companies decline to pay these bills the Government will find it necessary to alter materially the existing methods of dealing with immigrants suffering from such diseases. Of this I gave oral notice several weeks ago and repeated it last Tuesday (October 26) when we were together in the Secretary's office in Washington. At that time you stated (in substance) that pending consideration by the steamship companies as to whether or not they would continue to pay such hospital bills in accordance with recent practice you would recommend to them that they raise no question as to those accruing between October 26 and such time as they should notify me of their decision, and it was upon this condition that the Government agreed to defer for the present issuing an order that immigrants so diseased should be detained on board ship. I shall assume that your recommendations have been followed. Any of these steamship companies desiring not to follow them as to the future may so inform me and I shall then proceed at once to do whatever is proper to prevent bills being incurred which your clients say they will not pay and which the comptroller says the Government has no means of paying.

"During Saturday's conference at Ellis Island it was stated by you (if I mistake not) that in the event of the lines declining to continue to pay hospital bills according to recent practice they would request that patients of the classes here under discussion be held in hospital only until such time as the nature of the disease could be determined; that their cases be then disposed of forthwith by the immigration authorities, and in case of exclusion that deportation occur without delay. In the event stated I should be unable to com-

ply with this request for the reason amongst others, that in a great majority of cases the immigrants would be excluded, and this at a time when they would be too sick to be removed from hospital to the steamship for deportation. Humanitarian reasons might require their detention in hospital beyond the time when the lines would pay the bills, and, as a result, the Government would be compelled to sue for them. Not only does it not wish to become involved in such a mass of litigation as might result from this course, but the comptroller has decided that it has no right to pay these bills out of its own funds. In view of all these facts it will probably become necessary to forbid the landing of all sick immigrants whose hospital bills the steamship companies may decline to pay.

"One or two members of the committee that called Saturday intimated that our hospital detentions were in some instances unduly long. I am unwilling to assume, in the absence of proof, that any Federal or municipal surgeon is knowingly detaining an immigrant in hospital longer than is proper. If you will submit to me any instances of cases as to which this is now occurring I shall be glad to look into them personally and report to you my conclusions.

"Respectfully,

"(Sgd) WM. WILLIAMS,
"*Commissioner.*"

30 Mr. Beers, on November 3, 1909, wrote the commissioner proposing that an agreement be made whereby the steamship lines would maintain with the Government sufficient deposits from which should be paid amounts payable to them under the immigration act, leaving to be disposed of later a question of liability for hospital and detention charges in cases where the aliens were ultimately admitted, and he inclosed proposed forms of letters to be used by the companies in sending such deposits. Mr. Beers also proposed to have a test case made and tried to settle the question of such liability. To that letter the commissioner replied November 8, 1909, disapproving the proposals submitted by Mr. Beers.

On November 13, 1909, the Secretary of Commerce and Labor, the Hon. Charles Nagel, wrote to the commissioner of immigration at New York, and after referring to the opinions rendered by the solicitor of the department in January and February, 1909, advised the commissioner that in so far as said opinions were inconsistent with the decision of the Comptroller of the Treasury of October 9, 1909, the department adopt and follow the latter.

On November 20, 1909, certain steamship lines, including the plaintiff, wrote to the commissioner of immigration at Ellis Island, reiterating their contention that the immigration act did not impose upon them the expense of treatment and mantaining aliens not

brought in in violation of law and that such expense was one of the expenses of enforcing the laws regulating the immigration of aliens. They also stated that their counsel had stipulated, pending further consideration of the subject by the steamship lines, he would advise them to pay without prejudice the hospital and maintenance bills of aliens arriving after October 26, 1909. The lines also stated that they stood ready to pay such charges for aliens arriving between October 26, 1909, and November 22, 1909.

On December 16, 1909, the commissioner wrote Mr. Beers that the Government could not and would not pay any immigrant hospital bills, nor incur any expenses arising out of treatment of immigrants whether they be deported or eventually admitted, and that no immigrant could be placed in the Ellis Island Hospital except on the distinct understanding that the steamship company concerned would pay all hospital bills rendered in connection with such immigrant.

On December 17, 1909, Mr. Beers wrote the commissioner as follows:

"DECEMBER 17, 1909.

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration,*
"*Ellis Island, New York Harbor.*

"Matter of hospital and maintenance charges.

"DEAR SIR: On conferring to-day with the subcommittee of the lines having this matter under consideration, I am informed that since the receipt by you of the letter from the lines, under date of November 20 last, it has been the custom of your inspectors not to accept arriving sick aliens for treatment unless on the special agreement of the line bringing them that the line would be responsible for the expenses. These cases will therefore be disposed of by these special agreements.

31 "That there may be no misunderstanding as to other and future cases, I would say that the lines adhere to the position stated in their letters to you, dated September 16 and November 20 last, to the effect that they are not responsible for the hospital and maintenance charges of aliens who, on arriving are found to be afflicted with apparently temporary sickness, which may require treatment, but which does not warrant deportation, and that, therefore, the lines can not admit liability for these expenses.

"As already explained to you, this decision of the lines was based on a conviction that the immigration act does not require the steamship companies to pay these expenses, but does make them a charge upon the immigrant fund, and further that the immigration act

expressly authorizes your bureau to relieve 'such aliens as may fall into distress or need public aid.'

"Very truly, yours,

LUCIUS H. BEERS."

On December 20, 1909, the commissioner notified the claimant, together with other steamship lines, as follows:

"DEPARTMENT OF COMMERCE AND LABOR,
"IMMIGRATION SERVICE, OFFICE OF THE COMMISSIONER,
"*Ellis Island, New York, N. Y., December 20, 1909.*

"*To the steamship companies bringing immigrants to New York:*

"You have notified this office that you will not hereafter be responsible for the hospital or maintenance charges of immigrants who on arriving are found to be afflicted with apparently temporary sickness, though such sickness require treatment and though the patients can not until cured be allowed to land under the immigration law. Such immigrants are on your hands, the Government must decline to incur any expense in connection with their care while sick and before landed and furthermore there are no funds available for such purposes.

"The Government insists that you are responsible for all such charges, but it can not continue to be put in the position of being compelled to sue for them. It therefore gives you notice that as soon as appropriate arrangements can be made to meet the new situation forced upon it, your immigrants will be subjected to a preliminary medical examination on board ship, in order that those who are physically or mentally unfit to land under the immigration law may be detained on the vessels which brought them and not become charges on the public funds.

"You must also be prepared to have sent back to the vessel promptly upon their discovery at Ellis Island, such other cases of sickness covered by your notice as may have escaped the attention of our medical officers at the preliminary examination on board ship. Some time must elapse before the new arrangements can be perfected and in the meantime it may be necessary for the Government to place in hospital a number of cases covered by the terms of your notice. In such instances you will be held responsible for all expenses in accordance with the practice of the past 20 years.

"Should emergency cases arise in which you may wish to have sick immigrants who have been left in your custody receive hospital treatment on shore, the immigration authorities will not stand
32 in the way, provided you signify your willingness to assume the expenses by signing one of the blank forms which have

been lodged for this purpose with the immigration and medical officers going on board your vessels.

WM. WILLIAMS, *Commissioner.*"

Counsel for plaintiff on December 20, 1909, under order of the plaintiff, wrote the commissioner as follows:

"DECEMBER 20, 1909.

"HON. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

"DEAR SIR: Referring to the conference held at your office to-day with the commission of steamship lines in regard to your recent order that arriving aliens be examined on board ship, you will, no doubt, recall that you at first expressed some doubt as to the attitude of the lines toward their liability for hospital and maintenance charges for aliens brought to Ellis Island for examination. There need be no doubt on this subject. The lines admit, and have uniformly admitted, their liability for these charges for such reasonable period as is necessary to enable your officers to examine the aliens. This appears in the record of the original Toth case. And in the subsequent letters to you defining the attitude of the lines (viz, the letters of the lines of September 26 and November 20, 1909, and my letter of December 17, 1909), the lines referred back to their position as stated in the Toth case and reaffirmed that position.

"We have repeatedly mentioned this to you and have discussed with you what period should be considered reasonable for the examination, and, at one conference, suggested to you that it be the period while the vessel bringing the alien remained in port. But, within the bounds of a reasonable period, the lines admit, and always have admitted, their liability for these charges.

"Eliminating, however, these expenses before examination, we understood that you consider it necessary or proper to decline to examine arriving aliens at Ellis Island so as to avoid the possibility of expense to the Government for hospital treatment subsequent to the examination. The committee have accordingly considered the subject as affected by this position of your bureau and have decided that, until further notice, the lines will pay hospital and maintenance charges for detained aliens as heretofore, such payments to be made without prejudice to the claim of the lines that they are not liable for the hospital and maintenance charges of any alien not brought in violation of law except for such reasonable period as may be required for his examination.

"In making this reservation of the claim of the lines, the committee do not intend that payments made hereafter, until further notice, are to be made under protest, or that actions may be brought to recover such payments.

"The foregoing action of the committee was taken on behalf of the foreign passenger lines of the port, and I shall, therefore, ask the lines to write you confirming the action, but, in the meantime, I advise you of the committee's decision without delay.

"Yours, truly,

"(Sgd.) LUCIUS H. BEERS."

33 Acting upon the letter of their counsel dated December 20 above set forth, the steamship companies, including the claimant, thereupon wrote to the commissioner of immigration at Ellis Island, as follows:

"Hon. WILLIAM WILLIAMS,
"*Commissioner of Immigration, Ellis Island.*

Re hospital and maintenance charges.

"DEAR SIR: We, the undersigned, hereby adopt the statement of the committee as contained in the annexed letter addressed to you by Mr. Beers, counsel for the committee, under date of December 20, 1909. Until further notice, hospital and maintenance charges for arriving aliens will be paid by us as stated in that letter and on the terms there set forth.

"Yours, respectfully.

"LHB/JGM"

In the year 1910 there passed between the claimant and the commissioner of immigration correspondence in which the liability of the claimant for hospital charges was discussed and argued, the claimant continuing its contention that it was not liable for bills for treatment and maintenance of aliens ultimately admitted to the United States.

After the decision in the United States Circuit Court in the case of the United States v. Holland-America Line, on May 16, 1913, 205 Fed. Rep. 943, affirmed in 212 Fed. Rep. 116, Mr. Paddock, the counsel for the commissioner of immigration at Ellis Island, and Mr. Beers, the counsel for the steamship companies, conferred for the purpose of enabling an agreement to be reached as to the payment of expenses of detained aliens, pending an appeal by the United States in said action. They reached an agreement which was embodied in two letters dated June 3, 1913, sent to the commissioner of immigration at Ellis Island by various steamship lines, including the claimant.

Said letters are as follows:

"NEW YORK CITY, *June 3, 1913.*

"Hon. COMMISSIONER OF IMMIGRATION,
"*Ellis Island.*

"SIR: Pending an appeal taken by the United States from the decision of Judge Mayer, in the recent case of United States v. Holland-America Line, and until further notice, we agree, as follows, with respect to the payment of the maintenance charges and expenses of hospital treatment of the various classes of aliens to arrive on the vessels of our respective lines:

"1. We do not question our liability for the necessary hospital and maintenance expenses of aliens who are deported and we will, as heretofore, pay such expenses.

"2. With respect to arriving aliens who are sent to the hospital for treatment or observation and subsequently admitted (including what are known as accompanying aliens) we agree to pay to the United States the hospital and maintenance expenses of such aliens for the period during which they shall be detained in hospital, not exceeding in each case, however, five days after arrival at Ellis Island.

34 "3. If Judge Mayer's decision is reversed in whole or in part, we will pay such additional sums as we may be held liable for under the decision on appeal.

"4. We will, as heretofore, pay the maintenance changes (food bills) of aliens brought from our respective ships to Ellis Island for examination, such examination to be made as heretofore with all reasonable dispatch.

"(Signed by claimant and other steamship lines.)"

NEW YORK CITY, *June 3, 1913.*

"Hon. COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York.*

"SIR: In the latter part of the year 1909 the subject of the liability of the steamship companies for the maintenance and hospital expenses of detained aliens was under consideration by your department and the lines, and, at that time, certain agreements were made by us, or on our behalf, with respect to the payment of such expenses in the case of aliens to arrive. In the recent decision of Judge Mayer in the action pending in the United States District Court, brought by the United States against the Holland-America Line, the question of the liability of the lines for certain of these expenses has been passed upon, and we are accordingly writing you to-day agreeing with respect to the expenses which we are willing to pay, pending any appeal in that case and until further notice.

"Our letter of to-day on this subject is intended to supersede any previous agreements made in reference to the payment of the expenses to which we refer, and we would therefore respectively give notice that any agreements heretofore made on that subject by, or on our behalf, are revoked and superseded.

"(Signed by claimant and other steamship lines.)"

To the above-mentioned letters the commissioner replied to the attorney for the steamship lines as follows:

"DEPARTMENT OF LABOR,
"IMMIGRATION SERVICE, OFFICE OF COMMISSIONER OF IMMIGRATION,
"*Ellis Island, New York Harbor, N. Y., June 10, 1913.*

"LUCIUS H. BEERS, Esq.,
"*49 Wall Street, New York City.*

"SIR: Upon receiving your letter of June 6 I forwarded copies of the inclosures therein contained to the Bureau of Immigration, and in return have learned that they meet with its approval. Hereafter and until further notice hospital bills will be sent to the steamship companies in accordance with the terms of the inclosure dated June 3, beginning with the words 'Pending any appeal taken.' Hospital bills relating to the period prior to June 3, 1913, will be sent out in accordance with the terms of the paper of December 20, 1909, notice of revocation of which you have now sent this office under date of June 3, 1913.

"Respectfully,

"WM. WILLIAMS, *Commissioner.*"

IX.

By the act of October 22, 1913, it was provided that whenever aliens arriving are temporarily removed from a vessel in ac-
35 cordance with the provisions of section 16 of the immigration act of 1907, the steamship companies shall pay all expenses of removal and all expenses arising during subsequent detention pending decision of the eligibility of such aliens to enter the United States, including the expenses of maintenance and medical treatment in hospital or elsewhere.

X.

All the sums which the plaintiff sues in this cause to recover were paid for hospital charges on account of aliens who arrived at the port of New York prior to October 22, 1913.

XI.

At all times since July 1, 1907, there has been collected under the authority of the immigration law by officers of the United States a tax of not less than $4 for every alien entering the United States. The moneys so collected have in each year except 1915 and 1916 exceeded the amount required to meet all the expenses of regulating the immigration of aliens into the United States and have been, in addition, more than sufficient to meet all expenses of the character involved in this cause.

XII.

The Kingdom of the Netherlands, by its laws and statutes, accords to citizens of the United States the right to institute and to prosecute suits and claims against the Government of the Kingdom of the Netherlands, in the Kingdom of the Netherlands, for moneys due, and in such proceedings judgment may be recovered against the Kingdom of the Netherlands.

XIII.

The plaintiff herein has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States; no assignment or transfer of the claim herein made or any part thereof has been made at any time to any person or party, and no other person, persons, or corporation other than the plaintiff, is the owner of the claim herein sued for or in any way interested therein.

XIV.

The sums for which the plaintiff sues in this cause include the sums paid by it on account of aliens sent to hospitals for treatment or observation and subsequently admitted (including "accompanying" aliens) for the hospital expenses of such aliens for the entire period during which they were detained in hospitals, including the first five days after their arrival at Ellis Island.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides as a conclusion of law that the plaintiff is entitled to recover of and from the United States the sum of sixteen thousand nine hundred and ninety-three dollars and fifty cents ($16,993.50).

HAY, *Judge*, delivered the opinion of the court:

This is a suit brought by the plaintiff to recover from the defendants for the actual cost and reasonable value of the maintenance and medical care and treatment furnished by the defendants to a number of aliens who had been brought by the plaintiff to the United States on its steamers. These aliens at the time of their arrival were found to be suffering with certain diseases. Because they were suffering with these diseases it was not practicable for the immigration officials to examine them at the time of their respective arrivals for the purpose of ascertaining whether or not they were entitled to land. The immigration officials decided that it was necessary to hold these aliens for such examination until they had recovered from the diseases with which they were suffering. Those suffering with contagious diseases were removed from the vessel under order of the medical officers of the immigration service to public hospitals in or near New York City under contract arrangement made by the officers of the United States whereby the hospitals charged the United States at agreed rates for the treatment, care, and maintenance of said aliens. When these aliens were discharged from these hospitals they were taken to Ellis Island, the immigrant station for the port of New York, for examination as to their right to land, and all of these aliens for whose treatment, care, and maintenance the defendants exacted the sum now in suit were admitted.

Other aliens afflicted with other than contagious diseases were, upon arrival, removed from the vessels to Ellis Island for examination, and upon being examined there by medical officers, they were found to be afflicted with diseases which necessitated treatment before they could be permitted to land, and they were placed in the Ellis Island Hospital for treatment. Upon being discharged therefrom they were examined by the immigration officer and were all admitted.

The aliens for whom these charges were incurred were brought by the defendants to the port of New York between May 27, 1908, and December 9, 1913.

It is claimed by the plaintiff that the defendants were not authorized by law to compel it to pay the sum in suit for the treatment, care and maintenance of aliens in hospitals where they were being treated prior to their landing and being admitted to the United States. They base this contention upon the ground that the statute contains no provision which either expressly or by implication imposes upon the plaintiff the obligation of paying for these hospital expenses in cases of aliens who are after examination admitted to the United States. The statute which controls this case is the act of Feb-

ruary 20, 1907; after a careful examination it is not perceived that there is any specific authority in that statute which would require the plaintiff to pay these charges, nor can it be implied from the language of the statute that Congress intended that these charges should be paid by the plaintiff.

Section 16 of the act of February 20, 1907, is as follows:

"That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of incoming aliens provided for in sections twelve, thirteen, and fourteen of this act, it shall be
37 the duty of said officers to go or to send competent assistants to the vessel to which said lists or manifests refer, and there inspect all such aliens, or said immigration officers may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this act, bind the said transportation lines, masters, agents, owners, or consignees: *Provided*, That where a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care."

It will be seen from the reading of this section that the steamship companies are held liable for the detention and maintenance of aliens landed temporarily for examination at places where they remain in the companies' charge; but in the proviso to the section it is provided where the Government uses a suitable building for the detention and examination of aliens the immigration officials shall there take charge of such aliens and the companies shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care.

Judge Ward in the case of the United States v. Holland American Line, 212 Fed. Rep., 116, 119, says:

"The buildings on Ellis Island are just such suitable buildings, erected, indeed, by the means of the head money tax of $4 paid by the companies on each alien immigrant as required by the act. So also the State hospitals where immigrants having contagious diseases were at that time sent until they could be removed to Ellis Island for examination were suitable buildings, and the expense so incurred was defrayed by the Government out of the same source. We think the immigration officials, and not the defendant, were, in the language of the act, in charge of the immigrants in question at both places for all purposes."

Further, the language of the act is that where suitable buildings are used for "detention and examination" the immigration officials shall take charge of such aliens. The word "examination" is significant in this connection for the reason that the examination contemplated by the act could not take place until the aliens who were suffering with disease had been treated, cared for, and maintained, and it seems to the court that the act contemplated that the Government should pay charges which led up to the examination which was to take place before the alien could be admitted and with which the plaintiff had nothing to do, after the alien had been taken from its custody and placed in that of the defendants. It would seem that if Congress had intended to require from the plaintiff the payment of these charges it would have said so in plain terms, for the same act specified with great care and particularity what obligations and penalties the steamship companies are liable for. In sections
38 19 and 20 of the act these obligations and penalties are set out, and the omission from these obligations of these hospital charges is a pregnant circumstance going to show that it was not intended by Congress to impose them in that act; for by the act of October 22, 1913, this obligation was imposed upon the steamship companies. Such a law would not have been enacted if Congress had believed that it was already a law. It is, however, contended by the defendants that this act has been given a practical construction by the immigration authorities by the adoption of rules and regulations which impose upon the plaintiff the liability of paying the charges under consideration.

By section 22 of the act of 1907, the Commissioner General of Immigration is authorized to establish rules and regulations, not inconsistent with law. He can not make rules and regulations which are inconsistent with law, nor by such rules and regulations impose a liability which is not imposed by the act itself. If such a regulation imposing a liability is in the power of the officer it must have its source in the act under which the regulation is promulgated. Unless such power is conferred by the act the regulation becomes legislation by an administrative officer. It is a well-established principle that legislation can not be exercised under the guise of a regulation. This court has repeatedly passed upon the effect of regulations of the executive departments. It has uniformly held that such regulations could only have the force and effect of law when they are not in contravention to existing law. Illinois Central Railroad Company v. United States, 52 C. Cl., 53, and cases there cited.

As the act under consideration does not impose the obligation upon the plaintiff of paying these charges no rule or regulation could have that effect.

As to the claim of the defendants that the plaintiff bound itself by contract to pay these charges, it is only necessary to say that

from the evidence it appears that the plaintiffs were coerced into the making of that contract by a threat of the defendants which if carried into effect would have destroyed the plaintiff's business. In United States v. Holland American Limited, supra, the court said:

"It seems to us that the rule adopted by the immigration authorities was not consistent with law and was oppressive because it compelled the companies to pay in order to escape the alternative of having their steamers turned into hospitals and houses of detention. Such payments were not voluntary. They could not in the nature of things have been resisted."

For the foregoing reasons judgment will be entered in favor of the plaintiff for the sum of $16,993.50, and it is so ordered.

DOWNEY, Judge; BARNEY, Judge; BOOTH, Judge; and CAMPBELL, Chief Justice, concur.

39 V. JUDGMENT OF THE COURT.

At a Court of Claims held in the city of Washington on the third day of June, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn) is entitled to recover and shall have and recover of and from the defendants, the United States, the sum of sixteen thousand nine hundred and ninety-three dollars and fifty cents ($16,993.50).

BY THE COURT.

VI. DEFENDANTS' APPLICATION FOR, AND ALLOWANCE OF, AN APPEAL.

From the judgment rendered in the above-entitled cause on the 3rd day of June, 1918, in favor of the claimant, the defendants, by their Attorney General, on the 15th day of August, 1918, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed August 15, 1918.

Ordered: That the above appeal be allowed as prayed for.

EDWARD K. CAMPBELL,
Chief Justice.

AUGUST 24, 1918.

Court of Claims.

NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ (Holland-America Lijn)

vs.

THE UNITED STATES.

No. 32831.

I, Saml. A. Putman, chief clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law and opinion of the court by Hay, J., entered June 3, 1918; of the judgment of the court; of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 26th day of August, A. D. 1918.

[SEAL.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

(Endorsed on cover:) File No. 26728. Court of Claims. Term No. 642. The United States, appellant, vs. Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland-America Lijn). Filed August 28th, 1918. File No. 26728.

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